

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

West Lakes Investors, LLC,
Appellant,

v.

Dallas County Board of Review,
Appellee.

ORDER

Docket No. 13-25-0747
Parcel No. 16-01-102-007

On August 28, 2014, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Property Manager Marcus Miller represented West Lakes Investors, LLC. County Attorney Wayne Reisetter is counsel for the Dallas County Board of Review, and Deputy County Assessor Catherine Creighton appeared on its behalf at hearing. The Appeal Board, having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

West Lakes Investors, LLC, is the owner of a commercially classified property located at 6750 Westown Parkway, West Des Moines, Iowa. The subject property is a retail/shopping center built in 1999 on 3.04 acres. It has 29,150 square feet of building area and 54,200 square feet of concrete paving.

West Lakes protested to the Board of Review regarding the 2013 assessment of \$3,222,970, allocated as \$1,189,850 in land value and \$2,033,120 in improvement value. It claimed the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2) and asserted the correct total value was \$3,000,000. The Board of Review denied the claim.

West Lakes then appealed to this Board.

Marcus Miller testified on behalf of West Lakes. Miller asserts the subject property's rent rates have decreased since West Lakes purchased the property in 2009, which should in turn reduce its assessment. He believes this type of property should be valued based on its income.

West Lakes submitted several documents detailing its reduced rents and change in income. A letter to the Board of Review listed the average rent rates for 2009, 2011, and 2012.

<u>Year</u>	<u>\$/Square Foot</u>	<u>% Change</u>
2009	\$19.14	
2011	\$17.92	-6%
2012	\$16.75	-6%

Additionally, a profit and loss statement from 2011 to 2012 indicates a -7.1% change in income.

Miller stated the subject property is unique because it has 50% retail and 50% office space. There is also a hair salon in the building, managed by West Lakes, which Miller asserts negatively affects its bottom line.

Miller also noted that West Lakes has offered rental incentives such as reduced and free rent to attract and retain tenants. He cited an excerpt of a 2013 market survey from CBRE/Hubbell Commercial in support of this assertion. The excerpt indicates that despite minimal change in occupancy rates in the Greater Des Moines area, the retail market has seen a decrease in effective rent of retail space because of landlord incentives. Even though this excerpt may support Miller's testimony, West Lakes did not offer any evidence of the actual fair market value of the property as a result.

Dallas County Deputy Assessor Cathy Creighton testified for the Board of Review regarding a comparable sales analysis she created. (Exhibit A). Creighton explained the first sale on the spreadsheet, 3510 Merle Hay Road NW, Des Moines, was for informational purposes only and used to show market adjustments. She did not consider the sale in her analysis. She adjusted five additional sales on the spreadsheet to reach a conclusion of value for the subject property as of the assessment

date. (Exhibit A p. 1). She weighted the sales and determined an adjusted price-per-square-foot of \$110.41 for a final opinion of \$3,218,452. She concludes that this analysis supports the assessment. Creighton acknowledged four of the sales occurred after January 1, 2013, and would not have been available to set the assessment. However, she used these sales in support of the assessment because they were the only arm's-length sales available. Creighton also provided four other sales that occurred prior to the 2013 assessment date, to demonstrate that all of the other sales she found prior to the assessment date were bank sales. (Exhibit A p. 2).

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin Cnty. Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at one hundred percent of its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving

at market value. §441.21(1)(b). However, foreclosures and lender sales are not considered normal transactions and require adjustments to be used as comparable sales. § 441.21(1)(b).

Other factors, such as the cost and income approach, can be used when the parties convince PAAB that comparable sales do not exist or cannot readily determine market value. *Compiano v. Polk Cnty. Bd. of Review*, 771 N.W.2d 392, 398 (Iowa 2009); § 441.21(2). However, the Iowa courts have repeatedly held that unfavorable leases should not be used to lower assessments. *Merle Hay Mall v. City of Des Moines Board of Review*, 564 N.W.2d 419 (Iowa 1997) (holding that an unfavorable lease does not reduce a property's assessed value); *Oberstein v. Adair Cnty. Bd. of Review*, 318 N.W.2d 817 (Iowa Ct. App. 1982). "[T]he proper measure of the value of property is what the property would bring if sold in *fee simple*, free and clear of any leases." *I.C.M. Realty v. Woodward*, 433 N.W.2d 760, 762 (Iowa Ct. App. 1988) (emphasis added).

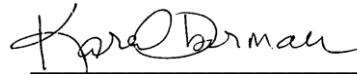
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

West Lakes Investors, LLC submitted its average rents for the years 2009, 2011, and 2012. It asserts the rents have declined by 6% each of the reported years; and therefore, it believes a fair assessment for the property would be \$3,000,000. West Lakes did not attempt to support this value with other market rates. Nor did it provide any other evidence such as comparable sales. The Board of Review's evidence suggests that comparable sales preceding the assessment date were not available; nevertheless, West Lakes failed to value the subject property based on the *market* and has thus failed to support its claim that the property is assessed for more than the value authorized by law.

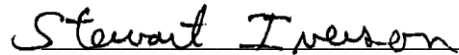
THE APPEAL BOARD ORDERS the 2013 assessment of the property located at 6750

Westown Parkway, West Des Moines, Iowa, is affirmed.

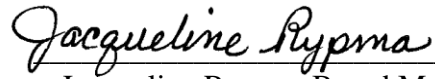
Dated this 4th day of September, 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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